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Crl.O.P.No.21450 of 2019 and
Crl.O.P.No.6401 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2023

Pronounced on : 24.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.21450 of 2019 and Crl.O.P.No.6401 of 2020
and
Crl.M.P.No.11085 of 2019 and
Crl.M.P.Nos.3530, 3531 of 2020

Crl.O.P.No.21450 of 2019

S.Sivakumar

...Petitioner/3rd Accused

Vs.

1.The State of Tamil Nadu

Represented by the Inspector of Police,

Cyber Crime Cell, CCB,

Vepery,

Chennai – 600 007.

...1st Respondent/Complainant

2.Mr.E.Subramanian

...2nd Respondent/Defacto complainant



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PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.468 of 2017 on the file of the Judicial Magistrate, Alandur, Chennai and to quash the final report/charge sheet dated Nil for the charges under Section 267 & 420 IPC as illegal, improper, against law, without jurisdiction and not maintainable under Section 75 of the Standards of Weights and Measures Act, 1976 and Section 63, 64 and 66 of Standards of Weights and Measures (Enforcements) Act, 1985 as well as under Section 51 of the Legal Metrology Act, 2009 which came in to force on 01.04.2011.

For Petitioner in

Crl.O.P.No.21450 of 2019 : Mrs.Lakshmi Sriram for
Mr.B.Sivaraman

For R1 in

Crl.O.P.No.21450 of 2019 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 in

Crl.O.P.No.21450 of 2019 : No Appearance

Crl.O.P.No.6401 of 2020

Dhanraj

...Petitioner/1st Accused

Vs.



CrI.O.P.No.21450 of 2019 and
CrI.O.P.No.6401 of 2020

1.The Inspector of Police,
Cyber Crime Cell, CCB,
Vepery,
Chennai – 600 007
(Cr.No.164/2010)

...1st Respondent/Complainant

2.Mr.E.Subramanian,

...2nd Respondent/Defactocomplainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.468 of 2017 pending on the file of the Learned Judicial Magistrate, Alandur, Chennai and quash the same.

For Petitioner in

CrI.O.P.No.6401 of 2020 : Mr.A.P.Sathyamurthy

For R1 in

CrI.O.P.No.6401 of 2020 : Mr.A.Damodaran

Additional Public Prosecutor

For R2 in

CrI.O.P.No.6401 of 2020 : No Appearance

COMMON ORDER

The petitioners are arrayed as A1 and A3 in the impugned final report. CrI.O.P.No.21450 of 2019 has been filed by A3. CrI.O.P.No.6401



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of 2020 has been filed by A1. The crux of the allegation in the impugned final report is that A1, with the technical assistance of A2 and A3, manufactured Electronic Weighing Machines (EWM) with fabricated control panel according to the needs of the trader; and sold them to greedy traders without getting them stamped and authorised from the Legal Metrology Officer. The further allegation is that the traders, who purchased the machines unlawfully, used them to cheat the general public in the trade. The petitioners were hence charged for the offences under Sections 267 and 420 of IPC.

2. Mrs. Lakshmi Sriram, the learned counsel for the petitioner/A3 in Crl.O.P.No.21450 of 2019 submitted that the impugned final report for the alleged offences, has to be quashed since the allegations, even if accepted to be true, only attract offences under the Legal Metrology Act, 2009. The learned counsel relied upon the Judgment of the Honourable Supreme Court in **(2019) 19 SCC 740 (State of Uttar Pradesh vs. Aman Mittal and another)** in this regard. The learned counsel further submitted that the offence under Section 420 IPC is also not made out against the petitioner since admittedly he did not deceive any person. The allegation



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is that the petitioner had the necessary expertise to deal with the program in the motherboard and had assisted the first accused in the illegal trade.

In the absence of any material to show that the petitioner had deceived any person, the offence of Section 420 IPC is not made out. Hence, the learned counsel prayed for quashing the impugned final report.

3. Mr. A.P.Sathyamurthy, the learned counsel for the petitioner/A1 in Crl.O.P.No.6041 of 2020 reiterated the submissions made by the learned counsel for the petitioner/A3 in Crl.O.P.No.21450 of 2019. The learned counsel added that even as per the allegations in the final report, the petitioner had adjusted the panels according to the needs of the trader. Even accepting the allegations to be true, the petitioner had not deceived any third party. The contract between the petitioner and the trader who purchased the Electronic Weighing Machines may be illegal but does not attract the offence of cheating since admittedly, it is on the trader's request the Electronic Weighing Machines were manufactured.

4. Mr. A.Damodaran, the learned Additional Public Prosecutor would submit that even if the offence under Section 267 of Indian Penal



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Code cannot be prosecuted in view of the Judgment of the Honourable Supreme Court in ***Aman Mittal's case*** (cited supra), the offence under Section 420 IPC can be prosecuted by the respondents. The Honourable Supreme Court had made that position clear in the very same Judgment. In the instant case, the offence under Section 420 IPC has been made out since, the traders had purchased the Electronic Weighing Machines only to ultimately cheat the general public. Hence, he prayed for the dismissal of the quash petitions.

5. This Court finds that the crux of the allegation, as stated earlier, is that A2 and A3 assisted A1 in manufacturing the Electronic Weighing Machines by adjusting the programs in the control panel without getting them stamped or authorised by the Legal Metrology Officer. The Honourable Apex Court in ***State of Uttar Pradesh Vs. Aman Mittal and another*** reported in ***(2019) 19 SCC 740*** had held as follows :

"34. In the light of principles laid down, we find that Section 3 of the Act completely overrides the provisions of Chapter XIII of IPC in respect of the offences and penalties imposable for violations of the



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provisions of the Act. it being a special Act. Therefore, if the offence is disclosed to be made out under the provisions of the Act, an accused cannot be charged for the same offence under Chapter XIII of IPC. Reading of Section 51 of the Act makes it clear that the provisions of IPC insofar as they relate to offences with regard to weight or measure, shall not apply to any offence which is punishable under the Act. Therefore, the provisions of IPC which relate to offences with regard to weight and measure as contained in Chapter XIII of IPC alone will not apply. No person can be charged for an offence relating to weight or measure falling under Chapter XIII of IPC in view of the provisions of the Act."

In view of the above observations of the Honourable Supreme Court, this Court finds that Section 267 IPC which falls under Chapter XIII of IPC cannot be invoked by the Respondent Police as the alleged act is covered by Provisions of Legal Metrology Act, 2009.

6. As regards the offence under Section 420 IPC, the allegation is that the first accused had illegally manufactured the Electronic Weighing Machines as per the specifications requested by the trader. Thus, it is not the case of the respondents that the petitioners deceived any trader.



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If that's the case, then certainly, the offence under Section 420 IPC would be made out. It would, at best, be an illegal contract between the first accused and the trader who purchased the Electronic Weighing Machines. The final report states that by selling the machines to traders knowing fully well that the trader is likely to mislead the general public and cause wrongful loss to them, the offence under Section 420 IPC is made out. The allegation is not that the petitioners had deceived the general public directly. Hence, the offence under Section 420 IPC is not made out. Section 26 of the Legal Metrology Act, 2009 provides for penalty for such acts. The provision reads as follows:-

*"26. **Penalty for alteration of weight and measure** - Whoever tampers with, or alters in any way, any reference standard, secondary standard or working standard or increases or decreases or alters any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby, (emphasis supplied) except where such alteration is made for the correction of any error noticed therein on verification, shall be punished with fine which may extend to fifty thousand rupees and for the*



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second and subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine or with both."

7.Further this Court finds that Section 51 of the Legal Metrology Act, 2009 specifically states that the provisions of the Indian Penal Code and Criminal Procedure Code shall not apply in relation to offences with regard to weight or measure. Section 51 of the Legal Metrology Act, 2009 reads as follows:

"51.Provisions of Indian Penal Code and Code of Criminal Procedure not to apply – The Provisions of the Indian Penal Code (45 of 1860) and section 153 of the Code of Criminal Procedure, 1973 (2 of 1974) in so far as such provisions relate to offences with regard to weight or measure, shall not apply to any offence which is punishable under this Act."

8.The alleged act of selling the machines knowing that it would be misused by the traders is an offence under Section 26 of the



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Legal Metrology Act. In view of the specific Provision under the Legal Metrology Act, 2009 which deals with the acts alleged against the petitioners and in the absence of the necessary ingredients to attract the offence under Section 420 IPC as stated earlier, this Court is inclined to quash the impugned proceedings filed for the offences under Sections 267 and 420 IPC. Hence, quashed.

9. Accordingly, Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

24.04.2023

dk

NCC: Yes/No

Index :Yes/No

Speaking/Non Speaking Order



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To

1. The Judicial Magistrate,
Alandur,
Chennai.

2. The Inspector of Police,
Cyber Crime Cell, CCB,
Vepery,
Chennai – 600 007.

3. The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN. J,
dk

Pre Delivery Common Order in

Crl.O.P.No.21450 of 2019 and Crl.O.P.No.6401 of 2020
and
Crl.M.P.No.11085 of 2019 and
Crl.M.P.Nos.3530, 3531 of 2020

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